

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
May 15, 2006, at 9:00 a.m.
Room 303 State Capitol Building
Helena, Montana

PRESENT: Governor Brian Schweitzer, Secretary of State Brad Johnson, Attorney General Mike McGrath, Superintendent of Public Instruction Linda McCulloch, and State Auditor John Morrison

Mr. Morrison moved for approval of the minutes from the April 17, 2006, meeting of the Board of Land Commissioners. Seconded by Mr. McGrath. Motion carried unanimously.

BUSINESS CONSIDERED:

506-1 APPROVAL OF 2006 COMPETITIVE BID HEARINGS

Ms. Sexton said this is a request for approval of the 2006 competitive bid hearings. There were 920 leases subject to renewal and we had 34 bids submitted on 32 of these leases. Only two of them came back for competitive consideration, that is, to reduce the high bid amount. The first one for the Board to consider is the Kittleson lease, #8777, located in Valley County.

Lease #8777. Rocky and Colleen Kittleson are the lessees, the high bidder was Josh DeDobbeleer at \$16.50. The parties come into the department and we hold an hour hearing before me, the director. We listened to both the high bidder and the current lessee and in our consideration the recommendation is the Board issue a 10-year term of lease back to Rocky and Colleen Kittleson. They were deemed the best qualified lessee as evidenced by his past management of the land. He has been very good with weed management. We recommend the rate of \$15.00/AUM. Mr. Kittleson had been at \$13.00 and the high bid was \$16.50. We recommend \$15.00/AUM as the prevailing community standard for this lease.

Mr. McGrath moved for approval of lease #8777. Seconded by Mr. Johnson. Motion carried unanimously.

Lease #7137. The lessee is Stephen Bodner and the parcel is located in Judith Basin country. It was a 320 parcel, the high bid was \$19.99/AUM from Mr. Charles Hedrick. Mr. Hedrick did not appear at the hearing, he did send in a letter, Mr. Bodner was the sole person attending. The recommendation was to have Mr. Bodner retain the lease at a grazing level of \$15.00/AUM. He is recognized as the best qualified lessee. He has put in water, he has divided the pastures and put in water developments and he has been a good steward of the parcel. He did rent other parcels at \$22.00/AUM and this was deemed to be less because of the additional services Mr. Bodner had to apply to this tract. This has good grazing quality on it although it is direct access to the highway. Water pumping costs vary with the cost of electricity and because of these many factors I concluded the rate of \$15.00/AUM is the prevailing community standard and it would obtain the market value for forage in this tract.

Motion was made by Ms. McCulloch to approve the director's recommendation on lease #7137. Seconded by Mr. Johnson. Motion carried unanimously.

506-2 PROPOSED SALE OF TRUST LAND IN MILES CITY

Ms. Sexton said this is a proposed sale in Miles City, the so-called Sanjel property. We brought this to the Board earlier in the year and we are now bringing this forward for approval of sale at a public auction. It is 15-20 acres of school trust land very close to Miles City. There may be other bidders on this as well. We completed the appraisal and all of the other pre-auction activities. There was a notice in the *Miles City Star* describing the project and requesting public comment. From the appraisal my recommendation is the Board set the minimum bid of \$5,000 per acre for public auction and it should be set pending approval by the legislative council. Because this parcel once had institutional activity upon it there is a statutory requirement that the legislative council has to approve it. My recommendation is the Board approve it at \$5,000 per acre as a minimum bid. If the minimum bid is obtained, the finalization of the sale and distribution of funds will take place within 30 days of the sale, again, pending approval by the legislative council. If by some chance Sanjel Corporation is uncertain as to whether they want to locate to the Miles City area, we have been working closely with local folks there, this has been a very popular issue with people in Miles City, the Department of Military Affairs will take the same parcel. We've been negotiating a lease with them for an armory also on trust land in that area. So if Sanjel doesn't take it the Department of Military Affairs will. If Sanjel does take it we will lease another part of this general vicinity to the Department of Military Affairs.

Ms. McCulloch said if the first deal doesn't go through and the Department of Military Affairs wants it, they understand that entering into this lease is at the \$5,000 rate?

Ms. Sexton said the lease will be based upon that as the appraised value.

Motion was made by Mr. Johnson to approve the proposed sale. Seconded by Mr. McGrath. Motion carried unanimously.

506-3 REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT
(Lycó Energy Corporation)

Ms. Sexton said this is located in Richland County in the horizontal Bakken formation. This communitization agreement brings together very small tracts for granting of a well permit under applicable spacing rules. In fact, in this tract the department's share comprises a little over 3% of the communitized area, about 40 acres, so it will receive a very small percentage of the oil and gas royalty. However, in that area that amounts to quite a bit. The director recommended approval of the agreement.

Motion was made by Ms. McCulloch to approve the agreement. Seconded by Mr. McGrath. Motion carried unanimously.

506-4 REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT
(Continental Resources Inc.)

Ms. Sexton said this is in Richland County with Continental Resources. The department's tract comprises 12.42% of the communitization area and we will see the appropriate portion of royalty from oil production. The director recommends approval.

Motion was made by Mr. Johnson to approve the communitization agreement. Seconded by Mr. Morrison. Motion carried unanimously.

506-5 FOOTHILLS #1 TIMBER SALE

Ms. Sexton said this is out of the Kalispell Unit, about 18 air miles southeast of Kalispell and east-northeast of Bigfork. The proposed sale is going to be on approximately 626 acres, 6.2 million board feet with an estimated minimum value of \$1 million. We have been working very hard on this and I want to compliment my staff on the efforts they have gone through to deal with local interests. In fact, as we speak today some of my staff are on the ground with Keith Hammer of Friends of the Wild Swan looking at ways to minimize impact to a trail that goes through the proposed sale area. The trail leads up to Jewel Basin, it is a popular trail and the Forest Service has an easement through state land. There was concern that the aesthetic and visual appeal of the trail might be impacted because of the timber sale so we have been working with Mr. Hammer and other folks in the area to minimize that impact. We will probably then be re-mapping a part of the unit in this sale. We're going to expand this further down slope so it isn't right next to the trail. It will be the same acreage, the same amount of timber, we are just relocating a part of this particular unit. They wanted to have a 300-foot setback of timber harvest. We may do some thinning in this area because there is a lot of dead and dying timber and that would be appropriate. However, we are going to try and work with them to keep the scenic and aesthetic appeal of the area. So again, my staff has worked very hard on trying to find common ground in this sale. It does contain 19 harvest units, a lot of salvage of primarily dead and dying mostly Douglas fir. There will be regeneration harvests occurring on 402 acres, stand improvement and commercial thinning on 224 acres. There is no old growth to be harvested. The harvest will be 100% tractor, there will be no new road construction required for this first sale. There will be a second Foothills sale coming up in July. This is all done under the same EIS. The adjustment boundary for this current proposed sale will be nine acres. There was public concern about logging in a hemlock forest because this area does contain approximately 500 acres of mixed conifer. Since the first timber sale is located in the southern portion of the project, no hemlock will be harvested in this sale. There will be logging near the Bigfork Nordic Center and there was concern initially for that but after the draft EIS closed we got a letter from the Bigfork Nordic Center that supported the sale because it opened up some ground for their cross country activities. A number of other issues were addressed and we have worked very hard to try to mitigate any concerns with this since it is a larger sale and a lot of this area does need to be treated. I recommend the Board direct the department to sell the Foothills #1 timber sale.

Ellen Engstedt, Montana Wood Products Association, said we have 17 member companies and they all do business in the State of Montana. They are very supportive of the proposed project alternative selected by the department. It will be accomplishing a number of objectives including maximizing revenue to the trust while improving conditions for other uses such as hiking and cross country skiing. Active management improves the condition of Montana's state trust lands both for the forest health and for recreation. I didn't know about the 300-foot setback, I heard there were discussions along that line. For those who have a problem with the visual impact of a logging job, I'd like to remind you that a few eggs have to be broken in order to make an omelet, and in this case the short term impact of a few trees being cut is far outweighed by the long term benefit to the forest in the condition of forest health, particularly this where you have disease and bug kill. I would strongly urge support on Foothills #1 and I'll be back in July with Foothills #2.

Jason Todhunter, Montana Logging Association, said we have a little less than 600 family-owned businesses that make up our organization. We strongly support Foothills #1. We encourage the state and

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we thank the DNRC for continuing on with their timber program. It is a very vital piece for our business, maintaining our infrastructure in the State of Montana. Keep up the good work and we strongly support the Foothills #1 option B.

Motion was made by Ms. McCulloch to approve the Foothills #1 Timber Sale. Seconded by Mr. Morrison.

Mr. Johnson said this compromise that has been reached with the folks there at the site of the sale, the department is comfortable it will still allow us to reach our management objectives in terms of that ground that is immediately adjacent to the trail?

Ms. Sexton said yes, we discussed this thoroughly with the folks on the ground, and Greg Poncin from our Kalispell office is here today and can speak to that. But there will be about nine acres of adjustment, its not a large area, we'll just move down slope a bit and we feel we can accomplish the same objectives.

A vote was taken on the motion. The motion carried unanimously.

506-6 OLD McDONALD TIMBER SALE

Ms. Sexton said this is out of the Clearwater Unit about six miles northeast of Lincoln and is about 3.6 million board feet, 378 acres, nine harvest units totaling the 378 acres. Access is on existing roads, a small portion less than one mile, will have new road construction. There will actually be a reduction in open road density. The target of this proposed sale is lodgepole pine, to improve the stand growth and vigor and reduce disease and insect outbreaks. There is no old growth. We have gone through the public process and addressed issues such as noxious weeds, fisheries, water quality, soil erosion and big game. The area has a large white tail deer population and is used by elk as a travel corridor. The snow intercept and hiding cover would be reduced, however, the leave trees on unharvested acres will continue to provide snow intercept and hiding cover in the sale area. There will be minimal impact to Lynx and grizzly bear in the area. The recommendation is that the Old McDonald Timber Sale be offered for sale.

Motion was made by Mr. Johnson to approve the Timber Sale. Seconded by Mr. McGrath. Motion carried unanimously.

Ms. McCulloch said can you tell me, I love the name of these timber sales, can anybody tell me where the name Old McDonald came from?

David Groeschl, DNRC Forest Management Bureau, said the name comes from a meadow nearby called McDonald Meadows. We typically look for a geographic either creek, meadow or old homestead to name these timber sales. I believe it is from the McDonald Meadows that are nearby the sale.

506-7 SKIDWAY TIMBER SALE

Ms. Sexton said this is out of the Helena Unit, about 25 miles east of Townsend in Broadwater County. This is a small timber sale, only 108 acres, with a volume of 473,000 board feet. This is going to primarily reduce overstocking in the risk of Western Spruce bud worm on Douglas fir. Seed tree and shelter tree harvest will be conducted on 56 acres and the remaining 52 acres will be commercially thinned with a residual stocking. About ½ mile of new road would be required, 3.2 miles of existing road

will be improved to meet current BMP standards. Issues that were addressed and mitigated include vegetation, fisheries, water quality, and grazing. The grazing lessees in this case favors the timber sale. There is not a noxious weed problem and there is an integrated plan for controlling noxious weeds that will be applied to this sale. There were no direct adverse affects on wildlife. I recommend the sale of the Skidway Timber Sale.

Motion was made by Mr. Morrison to sell the Skidway Timber Sale. Seconded by Mr. Johnson. Motion carried unanimously.

506-8 APPROVAL OF RIGHTS-OF-WAY APPLICATIONS

Ms. Sexton said this month we have 59 applications requesting approval. There are a number of historical electrical utility applications, historic telephone utility applications, historic private access roads, as well as an historic irrigation ditch, and new installations for telephone utilities. They are #9386 from Nemont Telephone Cooperative, for two buried telecommunications cables; #13209, 13211, 13213, 13215, 13217, 13219, 13222, 13224, 13226, 13228, 13230, 13232, 13234, 13236, 13239, 13241, 13243, 13245, 13247, 13437, 13438, 12472 through 13476, 13487 through 13503 from Triangle Telephone Cooperative for telephone distribution lines; #13469, 13477, through 13486 from Fergus Electric Cooperative for overhead electric distribution lines; #13471 from Lincoln Electric Cooperative for overhead electric distribution line; #13714 from Central Montana Communications for a buried telecommunications cable; #13715 from Pondera County Canal and Reservoir Company for an irrigation ditch; and #13716 from Vernon Erickson for a private access road to a single-family residence. Ms. Sexton said there is nothing of special note in these and she recommended addressing them as a group.

Motion was made by Mr. Johnson to approve the rights-of-way applications. Seconded by Ms. McCulloch. Motion carried unanimously.

INFORMATIONAL ITEMS

506-9 PPL MONTANA V. STATE OF MONTANA

Attorney General McGrath said you may recall the last time we discussed this case at a Land Board meeting was shortly after the state had gotten involved in the litigation. At that time the case was pending in federal court. Since that time it has been transferred to state court and recently we got a favorable opinion from Judge Honzel in the First Judicial District here in town. The issue is whether or not the owners or builders of dams across navigable rivers in the State of Montana have to pay rent for the use of the bed and the banks. And, if so, what that rent should be. When we first started looking at this we realized that this Board approves easements for virtually every conceivable use of rivers in Montana including irrigation uses, but for some reason historically there has never been a charge for hydroelectric power built on our streams. So that is the issue relative to the owners of dams, its not just PPL, it's Avista Corporation and PacifiCorp as defendants. The defense was they don't have to pay because the Federal Power Act preempts the state from having any say in this area. They are entitled under the Federal Power Act to build dams. The judge ruled, correctly I might add, that the Federal Power Act does not preempt the state from charging rents. We now have some smaller issues to deal with in front of Judge Honzel in terms of establishing that these streams are navigable. I suggest we just submit the journals of Lewis and Clark and ask the Judge to take judicial notice, which we probably will do something like that. I suspect we will then spend a considerable amount of time trying to figure out what the damages are: What are we

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going to charge? What are we owed for back rents? And what will be a charge for reasonable rents in the future? We've had some discussions with the staff and the director of DNRC about how to do that. We've done a lot of research into what's happening in other states and how they do that. Hopefully we will be able to have a negotiated settlement we can bring to the Board with the dam owners but it may well be we will litigate that part and have a judge make a determination as to the reasonable rents as well. I doubt this will be finally resolved any time soon. If we don't get a negotiated settlement I am quite sure the companies will appeal to the Montana Supreme Court. It could take some time.

Motion to adjourn was made by Mr. Johnson and seconded by Mr. McGrath.